## Case 2:18-cv-01834-BJR Document 1 Filed 12/19/18 Page 1 of 8

Robert Pauw, WSBA No. 13613 GIBBS HOUSTON PAUW 1000 Second Avenue, Suite 1600 Seattle, WA 98104-1003 Phone: (206)682-1080 (206)689-2270 Fax: 1 Email: rpauw@ghp-law.net 23 UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON 4 AT SEATTLE 5 6 Araceli Osorio, Plaintiff, 7 W.D. Wash. No. 2:18-cv-1834 v. 8 United States Citizenship and 9 Immigration Services; United States Customs and Border Patrol; United States COMPLAINT 10 Immigration and Customs; and United States Department of Homeland Security, 11 Defendants 12 13 14 INTRODUCTION 15 1. Plaintiff, Araceli Osorio, brings this action pursuant to the Freedom of 16 Information Act ("FOIA"), the Administrative Procedure Act ("APA"), and the Due 17 Process Clause of the Constitution. 18 2. Immigration and Customs Enforcement (ICE) alleges that Ms. Osorio is 19 under a final order of removal dated June 5, 2005. Ms. Osorio never received notice 20 of the hearing and was not aware that an order of removal was issued against her 21until she was ordered to report to ICE on May 30, 2018. 22 **GIBBS HOUSTON PAUW** 

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1	3. Ms. Osorio has the right to file a motion to reopen removal proceedings
2	under 8 U.S.C. §1229a(c)(7). In order to effectively prepare a motion to reopen, Ms.
3	Osorio needs to review a copy of her deportation file ("A-file").
4	4. On July 3, 2018, Ms. Osorio filed a request under the Freedom of
5	Information Act for a copy of her A-file with U.S. Citizenship and Immigration
6	Services. U.S. Citizenship and Immigration Services acknowledged receiving the
7	FOIA request on July 5, 2018.
8	5. In response to Ms. Osorio's FOIA request, U.S. Citizenship and
9	Immigration Services has stated that it is waiting for Ms. Osorio's file to come from
0	another unnamed agency before responding to the FOIA request. On information
1	and belief, the other agencies that have records relating to Ms. Osorio include
2	United States Customs and Border Patrol (CBP); United States Immigration and
13	Customs (USCIS); and United States Department of Homeland Security (DHS).
4	6. The Defendants have failed to timely respond to Plaintiff's FOIA request
15	and have unlawfully withheld the documents requested.
16	7. The actions of the Defendants and their failure to act constitute a violation
L <b>7</b>	of the FOIA and a violation of Due Process. Ms. Osorio seeks an order compelling
18	the Defendants to produce documents that have been requested so that she can
19	effectively respond to the alleged order of removal and file a motion to reopen.
20	PARTIES
21	8. Plaintiff Araceli Osorio is a resident of Kent, Washington.

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1	9. Defendant U.S. Citizenship and Immigration Services (USCIS) maintains			
2	records requested by Plaintiff Araceli Osorio, and is the agency that is called on to			
3	respond to the FOIA request and decides whether to release or withhold documents			
4	requested by Ms. Osorio.			
5	10. Defendant U.S. Immigration and Customs Enforcement (ICE) has			
6	ordered Ms. Osorio to report under an order of supervision and may take steps to			
7	remove Ms. Osorio from the United States before she is given a meaningful			
8	opportunity to file a motion to reopen. In addition, ICE maintains records subject t			
9	the FOIA Request submitted by Plaintiff Araceli Osorio, and decides whether to			
10	release or withhold those documents.			
11	11. Defendant U.S. Customs and Border Patrol (CBP) maintains records			
12	subject to the FOIA Request submitted by Plaintiff Araceli Osorio, and decides			
13	whether to release or withhold those documents.			
14	12. Defendant U.S. Department of Homeland Security (DHS) maintains			
15	records subject to the FOIA Request submitted by Plaintiff Araceli Osorio, and			
16	decides whether to release or withhold those documents.			
17	FACTUAL BACKGROUND			
18	13. Plaintiff Araceli Osorio is currently under an order of supervision and is			
19	required to report to the ICE office in Tukwila, Washington on January 10, 2019.			
20	ICE claims that Ms. Osorio is under a final order of removal dated June 5, 2005.			

Ms. Osorio never received notice of the hearing and was not aware that an order of

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1	removal was issued against her until she appeared at the ICE office on May 30,			
2	2018.			
3	14. In order to respond to adequately respond to the allegation that an order			
4	of removal has been issued against her and effectively prepare a motion to reopen,			
5	Ms. Osorio needs a copy of any and all information maintained by the Defendants			
6	regarding her immigration status.			
7	15. On July 3, 2018, Ms. Osorio filed a request under the Freedom of			
8	Information Act requesting a copy of any and all information relating to her. U.S.			
9	Citizenship and Immigration Services acknowledged receiving the FOIA request or			
10	July 5, 2018.			
11	16. U.S. Citizenship and Immigration Services has stated that another office			
12	has control of Ms. Osorio's file and that the FOIA response is delayed pending a			
13	response from that agency.			
14	17. On information and belief, ICE, CBP and DHS are other agencies that			
15	have records relating to Ms. Osorio that are subject to Ms. Osorio's FOIA request.			
16	18. On September 18, 2018, Ms. Osorio reported to ICE under her order of			
17	supervision. Ms. Osorio informed ICE that she has filed a FOIA request and is			
18	waiting for a copy of her deportation file, and that she intends to file a motion to			
19	reopen once she has an opportunity to review her file. ICE ordered Ms. Osorio to			
20	report again on January 10, 2019, and has stated that if she has not filed a motion			
21	to reopen by that date then she may be taken into custody and deported.			

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1	19. To date, the Defendants have not produced any of the documents			
2	requested by Ms. Osorio, and have withheld documents that are not subject to any			
3	exemption under the FOIA.			
4	20. To date, Ms. Osorio has not seen a copy of the alleged order of removal or			
5	any documents that would support the issuance of an order of removal.			
6	21. Because of the failure of the Defendants to timely produce copies of the			
7	documents that have been requested, Ms. Osorio is unable to adequately respond to			
8	the adverse evidence that ICE is relying on and is unable to effectively prepare a			
9	motion to reopen.			
10	JURISDICTION			
11	22. This Court has jurisdiction over this action pursuant to 5 U.S.C.			
12	§552(a)(4)(B) (Freedom Of Information Act) and 28 U.S.C. §1331 (federal question).			
13	The Administrative Procedure Act, 5 U.S.C. 551, et seq., applies to this action.			
14	VENUE			
15	23. Venue is proper in the Western District of Washington under 5 U.S.C.			
16	552(a)(4)(B) and 28 U.S.C. § 1391(e). This case is a civil action in which the			
17	Defendants are officers or employees of the United States or an agency thereof. A			
18	substantial part of the events or omissions giving rise to the claim occurred within			
19	this judicial district. Plaintiff Araceli Osorio resides in Washington State, and this			
20	action does not involve real property.			
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1	CLAIMS FOR RELIEF		
2	COUNT 1 - VIOLATION OF THE FOIA: FAILURE TO PRODUCE RECORDS		
<ul><li>3</li><li>4</li><li>5</li></ul>	<ul><li>24. Plaintiff realleges, as if fully set forth herein, paragraphs 1-23 above.</li><li>25. The failure of the Defendants to respond in a timely manner to the FOIA</li></ul>		
requests submitted by Plaintiff Araceli Osorio, and the withholding of the documents requested by Ms. Osorio under the FOIA, constitutes a violation 7			
8 9	U.S.C. §552(a).  COUNT 2 - VIOLATION OF THE APA: UNLAWFUL DELAY  26. Plaintiff realleges, as if fully set forth herein, paragraphs 1-23 above.		
10 11 12	27. By failing to respond to the FOIA requests submitted by Plaintiff Araceli Osorio, and by withholding the documents requested, the Defendants have		
13	unlawfully withheld and unreasonably delayed agency action, in violation of Administrative Procedure Act, 5 U.S.C. §§702, 704 and 706.  COUNT 3 - VIOLATION OF DUE PROCESS		
.5 .6	<ul><li>28. Plaintiffs reallege, as if fully set forth herein, paragraphs 1-41 above.</li><li>29. The failure of the Defendants to provide copies of the documents</li></ul>		
requested by Plaintiff Araceli Osorio before executing an alleged order of re constitutes a violation of the Due Process clause of the Constitution.  REQUESTED RELIEF			
20	WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:		
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1	A.	Find that Defendants have violated 5 U.S.C. §552(a)(6)(A) by failing to		
2	provide a timely response to the Plaintiff's FOIA request;			
3	В.	Find that Defendants have violated 5 U.S.C. §552(a) by improperly		
4	withholding documents requested by Plaintiff Araceli Osorio;			
5	C.	Order Defendants to conduct an adequate search for all agency records		
6	responsive	to Plaintiff's FOIA Request within ten working days of the date of the		
7	Court's Order;			
8	D.	Enjoin Defendants from withholding any and all nonexempt records		
9	responsive to Plaintiffs' FOIA requests;			
10	E.	Enjoin Defendants from taking Plaintiff into custody and removing		
11	Plaintiff from the United States until Plaintiff has had a reasonable opportunity to			
12	obtain a copy of her immigration file, review such documents, and file a motion to			
13	reopen if that is necessary;			
14	F.	Award Ms. Osorio the costs and reasonable attorney's fees incurred in		
15	this action pursuant to 5 U.S.C. §552(a)(4)(E) and/or pursuant to the Equal Access			
16	to Justice Act;			
17	G.	Grant such other relief at law and in equity as the Court may deem		
18	just and proper.			
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1 2 Respectfully submitted, 3 By: /s/ Robert Pauw Robert Pauw 4 Attorney for Plaintiff Gibbs Houston Pauw 5 1000 2nd Ave, Suite 1600 Seattle, WA 98104 6 (206) 682-1080 7 8 December 19, 2018 Dated: 9 10 11 12 13 14 15 16 17 18 19 20 21 22

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